

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
SOUTHWESTERN DIVISION**

Randal R. Steen,	)	
	)	
Petitioner,	)	<b>ORDER ADOPTING REPORT AND RECOMMENDATION</b>
	)	
vs.	)	
	)	
Robyn T. Schmalenberger,	)	Case No. 1:07-cv-094
	)	
Respondent.	)	

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On July 30, 2009, the Respondent<sup>1</sup> filed a “Motion to Dismiss Section 2254 Application.” See Docket No. 20. The petitioner, Randal R. Steen, filed a response in opposition to the motion on October 22, 2009. See Docket No. 31. The Respondent filed a reply brief on October 29, 2009. See Docket No. 34. On August 20, 2010, Magistrate Judge Charles S. Miller, Jr. issued a Report and Recommendation wherein he recommended that the Court grant the Respondent’s motion to dismiss, deny Steen’s petition, certify that an appeal from the denial of this action may not be taken in forma pauperis, and that a certificate of appealability not be issued. See Docket No. 40. Steen filed an objection on October 5, 2010. See Docket No. 45.

In Steen’s objection, he maintains he is innocent of the crimes for which he was convicted. He also contends he received ineffective assistance of counsel at trial, on appeal, and in his post-conviction proceedings. Additionally, he argues his Fourth Amendment rights were violated prior to his arrest.

The Court has carefully reviewed the Report and Recommendation, relevant case law, Steen’s objection, and the entire record, and finds the Report and Recommendation to be persuasive.

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<sup>1</sup>On August 20, 2010, the Court, on its own motion, ordered that Warden Robyn T. Schmalenberger be substituted for Timothy Schuetzle due to Schuetzle’s retirement as Warden of the North Dakota State Penitentiary. See Docket No. 39.

Accordingly, the Court **ADOPTS** the Report and Recommendation (Docket No. 40) in its entirety, **GRANTS** the Respondent's motion to dismiss (Docket No. 20), and **DENIES** Steen's petition under 28 U.S.C. § 2254 for a Writ of Habeas Corpus by a Person in State Custody (Docket No. 1). The Court certifies that an appeal from the denial of this action may not be taken in forma pauperis because such an appeal would be frivolous and cannot be taken in good faith, and **ORDERS** that a certificate of appealability not be issued.

**IT IS SO ORDERED.**

Dated this 8th day of October, 2010.

/s/ Daniel L. Hovland

Daniel L. Hovland, District Judge  
United States District Court